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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1993

MICHAEL D. CRUTCHFIELD,
Petitioner

v.

CAROL R. McGREGOR,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT IN AND FOR THE COUNTY OF KLAMATH, STATE OF OREGON

PETITION FOR WRIT OF CERTIORARI

Michael D. Crutchfield
Petitioner-In pro per
630 Flowers Lane
Klamath Falls, Oregon
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QUESTIONS PRESENTED

Whether Petitioner was denied a fair and meaningful opportunity for hearing when the Klamath County Circuit Court Judge instructed the jury on the criminal aspects of artificial insemination, not at issue, causing unfair prejudice and, allowing the movant to extrapolate testimony of events outside the period of conception, contrary to the Order limiting evidence and, by allowing Petitioner's attorney-client privilege to be violated which the Oregon Court of Appeals and the Supreme Court of Oregon declined to address in summary fashion due to the negligence of the trial court Clerk in sending timely notice of entry of judgment precluding Petitioner's right to appeal, pursuant to the Oregon Rules of Civil Procedure (ORCP 70B) 70B.

LIST OF PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the Circuit Court of Klamath County, the Oregon Court of Appeals and, the Supreme Court of Oregon.

However; under the Supreme Court Rule 29.4(c), 28 USC § 2403(b) may be applicable because, the statutes, Oregon Revised Statutes 677.990(1) and (3), as read to the jury, making it a misdemeanor crime for a woman to artificially inseminate herself with a known donor's semen should be declared unconstitutional.

Therefore, the Oregon Attorney General and the Governor of Oregon are being included as Intervenors because of the above rules and because such jury instruction denied Petitioner an unbiased jury of his peers, predominately female.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1993

MICHAEL D. CRUTCHFIELD,
Petitioner

v.

CAROL R. McGREGOR,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT IN AND FOR THE COUNTY OF KLAMATH, STATE OF OREGON

Petitioner Michael D. Crutchfield, pro se, respectfully petitions this Court for a Writ of Certiorari to issue to review the proposed decree of filiation and judgment of the Klamath County Circuit Court in Case No. 91-00170-CF dated June 25, 1993, review of which was denied by the appellate courts of Oregon.

OPINION BELOW

The proposed decree of filiation and judgment dated June 25, 1993 in Klamath County Circuit Court Case No. 91-00170-CF, App. A, is the primary decision Petitioner seeks review of.

The Oregon Court of Appeals denied Petitioner's appeal on August 23, 1993, App B, Case No. CA A80757 and denied reconsideration, App B-1, on November 3, 1993.

The Supreme Court of Oregon denied Petitioner's petition for review on December 21, 1993, App C, Case No. SC S40631 and is the secondary concern Petitioner seeks review of, which precluded Petitioner's appeals thus far, through no fault of his own, because of the negligence of the trial court Clerk in issuing and mailing timely notice of entry of judgment under ORCP 70 B.

JURISDICTION

The proposed decree of filiation and judgment and, the denial of Petitioner's appeals to both the Oregon Court of Appeals and Supreme Court of Oregon, ending December 21, 1993 leave only this Court for a remedy under 28 USC §§ 1257, 1651, 2104 and 2107 in aid of this Court's appellate jurisdiction under Article III, Section 2, Clause 2.

Under the Oregon Rules of Civil Procedure, ORCP 70, technically, the time for appeals has not tolled and Petitioner has exhausted all other available remedies.

Ninety days have not elasped since the filing and docketing of this petition for Writ of Certiorari which includes allowable time for correction.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States.

Additionally, this case involves Article I, Sections 10 and 20, Constitution of Oregon.

Because of the volumnous nature of the above Constitutional provisions, Petitioner refrains from setting them forth verbatim under Supreme Court Rule 14.1(f) and 14.1(k)(vi), to be later included in a joint appendix.

Petitioner asserts that the federal question pertaining to this case arises from trial practice and procedure and the resulting proposed decree of filiation and judgment which conflicts with other decisions of State and Federal Courts involving a zone of privacy, i.e., the fundamental right to procreate via artificial insemination.

STATEMENT OF THE CASE

This is a case of first impression involving a unique fact situation.

On January 14, 1986 a child was born to Respondent out of wedlock, who, later filed suit to establish filiation and paternity of Kyle Mathew McGregor on February 8, 1991.

Petitioner was served with a copy of the summons and complaint on June 10, 1991 and maoe his initial appearance via Leslie Kline (OSB # 76205) on July 29, 1991.

By mutual agreement, DNA testing was performed by Genetic Design, Inc., 7017 Albert Pick Road, Greensboro,N.C. 27409, the results of which were used at trial.

Petitioner fired previous counsel and hired Brent Caldwell (OSB # 73048) who represented Petitioner from March 2, 1993 through the trial of May 10-11, 1993 at which time a unanimous jury verdict was rendered against Petitioner.

A further hearing was held and on June 10, 1993 the trial Court issued its partial letter opinion. App A, pgs. 10-14.

On June 15, 1993 Gary Hedlund (OSB # 73129) issued a proposed Decree of Filiation and Judgment, however, to date, no notice of entry of Judgment has been provided to Brent Caldwell or Petitioner in compliance with ORCP 70 B.

On July 24, 1993 Petitioner received a Writ of Continuing Garnishment at work that indicated a money judgment was obtained by Respondent on June 24, 1993.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The proposed Decree of Filiation and Money Judgment is erroneous because: 1) the Clerk of the trial Court has not fulfilled her prescribed duties under ORCP 70 B, tolling time for appeal, 2) the trial Court errored with its Order

limiting evidence at trial; in giving the jury charge the 99.59% probability only; and criminality of artificial insemination; and by allowing Petitioner's attorney-client privilege to be violated which prejudiced the jury.

For these reasons, Petitioner would have prevailed on appeal and would substantially prevail on retrial because a predominately female jury could have delivered no other verdict in light of the errors which not only confused but prejudiced them against Petitioner.

ARGUMENT

The Oregon Supreme Court has given conflicting rulings on the necessity of compliance with ORCP 70 A; that every judgment "be in writing plainly labeled as a judgment" and that the disposition be "set forth in a separate document." Gibson v. Benj. Franklin Fed. Savings and Loan, 294 Or 702, 710-711, 662 P2d 703 (1983); and City of Portland v. Carriage Inn, 296 Or

191, 194, 673 P2d 531 (1983), respectively.[1]

Instructively, in both Gibson and Carriage Inn, supra, the Court construed the separate document requirement in such a way as to preserve, rather than dismiss, appeals.

ORCP 70 B(1) requires that all judgments be filed and entered. The clerk is required to mail notice of entry of judgment. Failure to timely issue and mail the required notice does not invalidate the judgment, require its reentry, or toll the time for appeals. Far West Landscaping v. Moore Merchandising, 287 Or 653, 660, 601 P2d 1237 (1979); Simpson v. Simpson, 73 Or App 1, 5, 697 P2d 570 (1985); and Junction City Water Control v. Elliot, 65 Or App 548, 551-552, 672 P2d 59 (1983), respectively.

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1 Oregon Rules of Civil Procedure (ORCP), Rule 70 is set forth in pertinent part in App. D.

A judgment therefore, is only made valid and effective upon entry and notice consistent with the requirements of ORCP 70, ORCP 70B(1) and 70B(2). Blackledge v. Harrington, 289 Or 139, 143-144, 611 P2d 292 (1980). Where timely notice of entry is not provided, an appeal cannot be dismissed as untimely. Henson v. Henson, 61 Or App 210, 656 P2d 345 (1982); Amvesco, Inc. v. Key Title Co., 69 Or App 740, 687 P2d 1121 (1984).

Technically, time for appeal has not tolled and dismissal of Petitioner's appeal was premature. Ludwick v. Yamhill County, 72 Or App 224, 696 P2d 536 (1985), Sup Ct rev den.

Petitioner is behooved by the fact that the Court Clerk and/or Brent Caldwell can not and did not provide timely notice of entry of judgment. Considering statutory law and the foregoing stare decisis on this simple requirement; why did Oregon's appellate Court's deny Petitioner's appeal.

The Oregon Court of Appeals and Supreme

Court of Oregon have deviated from their own rules and precedents, to include those of the 7th Circuit and this Court, which dealt with judgments under the F.R.Civ.P. Rules 58 and 79(a), 28 U.S.C., F.R.Civ.P. In Hatch v. Lane, 854 F2d 981, 982 (7th Cir. 1988); and Bankers Trust Co. v. Mallis, 435 US 381, 385 (1978) per curiam, these two Courts ruled:

> "If no judgment is entered, time for appeal technically never begins to run."

While those decisions do not touch upon mailing notice of entry of judgment, it stands to reason that such decisions could not have been given without considering it, since such unauthorized practice would preclude litigants notice and opportunity to appeal, similarly situated in the case of Ludwick v. Yamhill County, supra, and Kay v. David Douglass School Dist. No. 40, 303 Or 574, 738 P2d 1389 (1987).

Besides being denied a remedy through the normal appellate process, Petitioner has been required to pay on a Writ of Continuing

Garnishment which jeopardizes his employment and career. Such practice has been enjoined in Oregon since Charco, Inc. v. Cohn, 242 Or 566, 571, 411 P2d 264 (1966); and Esselstyn v. Casteel, 205 Or 344, 365-366, 286 P2d 665, 288 P2d 214-215 (1955).

Therefore; in assessing liability for Clerk's negligent failure to give notice of entry of judgment, the reviewing Court must determine: 1) whether Petitioner would have secured a new trial, and 2) whether Petitioner would have secured a more favorable result on retrial. Accord Universal Ideas v. Linn County, 64 Or App 805, 808, 669 P2d 1165 (1983).

Since Petitioner was denied appeal in Oregon, through no fault of his own, he proceeds with the first test prescribed in Accord, supra.

WHETHER PETITIONER WOULD HAVE PREVAILED ON APPEAL AND SECURED A NEW TRIAL

Petitioner argued in Oregon's appellate Courts that he received no notice of entry of judgment and that the time for appeals has not yet tolled. Nevertheless, those Courts denied his appeals as moot. Petitioner assigns as error, the trial Court Order limiting evidence, because it allowed the movant to extrapolate testimony of events outside the period of conception while enjoining Petitioner any rebuttal. Respondent's attorney, Gary Hedlund (OSB #73129) cited State ex rel Pershall v. Woolsey, 51 Or App 339, 625 P2d 1340 (1981) as authority for limiting this evidence, but to be fair, can not be a one way door.

Respondent's uncorroborated word before, during, and after the period of conception cannot support the verdict. See: State ex rel AFSD v. Buethe, 307 Or 89, 763 P2d 723 (1988).

Petitioner was substantially prejudiced at trial because one critical witness deceased, two others moved away from the area and could not be reached. At new trial, these two witness's testimony would disprove Respondent's account of events during the period of conception. Moreover, would show that Respondent solicited other donors semen; that she was suffering from extreme guilt over a previous adoption which she intended to overcome by securing filiation and paternity in this case.

Since Respondent's jury instruction no. 4, as instructed by the Court, states:

"Michael D. Crutchfield cannot be found to be the father of the child unless the testimony of Carol R. McGregor is corroborated,"

what other valid corroboration could there be except the DNA test results, or a gross violation of the attorney-client privilege in this case ?

THE DNA TEST RESULTS ARE NOT CONCLUSIVE

The DNA test results given by the expert from Genetic Design, Inc., are not and can

not be conclusive as no tests were performed concerning Petitioner's fertility or infertility in 1985 or 1993. Moreover, DNA tests can not account for the method of conception, i.e., sexual intercourse v. artificial insemination. Under Oregon Law, there is a difference because the former is not a donor and the latter is not a father.

The expert from Genetic Design, Inc., testified that Petitioner's probability of paternity was 99.59%. The expert also testified that the paternity index was 2190 to 1. Since two different and distinct determinations were given, why was the jury only instructed on the probability, i.e., 99.59%?

This expert's testimony was convoluted by Gary Hedlund at closing arguments to the extent that the jury was obviously confused and, at that point, the jury charge eliminated any objectiveness because 99.59% is near conclusive. Nevertheless, Respondent relies upon Plemel v. Walter, 303 Or 262, 735 P2d 1209 (1987) for the proposition

that Petitioner's probability of paternity was 99.59%. Under the circumstances of that case and the present one, such a conclusion was held not to be probative because it unfairly prejudiced and confused the jury.

Under these circumstances, the Supreme Court of Oregon granted new trial, Plemel v. Walter, supra, citing ORS 109.258, OEC 401-403 and OEC 702, because the trial Court errored in giving the jury instruction as to only the 99.59% liklihood of paternity.

DID THE TRIAL COURT ERROR WHEN IT INSTRUCTED THE JURY CONCERNING THE CRIMINAL ASPECTS OF ARTIFICIAL INSEMINATION AND BY OMMITTING INSTRUCTION ON THE REMAINDER OF THE STATUTORY SCHEME

Since Roe v. Wade, 410 US 113, 35 L Ed 2d 147, 93 S Ct 705, reh den 410 US 959, 35 L Ed 2 694, 93 S Ct 1409 (1973), this Court has held that the fundmaental right to procreate may not be violated, except for a valid compelling reason. Cited in that case are Griswold v. Connecticut, 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678 (1965), providing "the concept of liberty protects those personal rights that are fundamental"

and includes many "zones of privacy;" and Eisenstadt v. Baird, 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029 (1972), for the proposition that dissimilar treatment for married and unmarried persons similarly situated, violates the equal protection clause of the 14th Amendment, because the right of privacy inheres in the individual, not in the marital couple.

Relying on these concepts, Petitioner concedes that he was a donor under the statute, ORS 109.239, which reads:

ARTIFICIAL INSEMINATION

> 109.239 Rights and obligations of children resulting from artificial insemination; rights and obligations of donor of semen. If the donor of semen used in artificial insemination is not the mother's husband:
>
> (1) Such donor shall have no right, obligation or interest with respect to a child born as a result of the artificial insemination; and
>
> (2) A child born as a result of the artificial insemination shall have no right, obligation or interest with respect to such donor.

Petitioner has not impliedly or expressly conceded to being the child's father

under the statute, ORS 109.230, which reads:

> 109.230 Legality of contract between mother and father of child born out of wedlock. Any contract between the mother and father of a child born out of wedlock is a legal contract, and the admission by the father of his fatherhood of the child is sufficient consideration to support the contract.

There is no reason for Petitioner to believe that the Legislature used "donor" and "father" as synonymous when it enacted these two statutes.

Petitioner contends the Legislature intended to preclude him as a father, in this unique fact situation, because: 1) he was a donor, 2) Respondent is unmarried, 3) there was no cohabitation, 4) Petitioner gave his semen in reliance upon an agreement that he have no parental rights, 5) Petitioner does not want parental relationship, and 6) the statute, ORS 677.990(1) and (3) is overly broad and vague, and unconstitutionally impinge upon fundamental right, within a zone of privacy, in choice to donate semen.

In support, Petitioner offered the express contract of surrogacy and his affidavit in support.

Furthermore, the legitimate purposes of ("the act")[2] are: 1) to allow married couples to have children, 2) to allow unmarried women to have children, 3) to resolve potential disputes, i.e., a) if the mother's husband consents, he is the father and b) the unmarried mother is freed of any claims by the donor, 4) to encourage men to donate semen by protecting them from future claims, and 5) to legitimize the child. To achieve those purposes, a donor is barred whether known or anonymous. McIntyre v. Crouch, 98 Or App 462, 780 P2d 239 (1989), cert den ___ US ___, 110 S Ct 1924 (1990).

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2 ("the act") concerning artificial insemination under Oregon Law is set forth in McIntyre v. Crouch, supra, and incorporates several separate and distinct statutes, all of which should have been presented to the jury.

In McIntyre v. Crouch, supra, Petitioner wanted to be the father, donating his semen in reliance on that agreement. In this case, Petitioner did not want to be a father, rather a donator, and gave his semen in reliance on that agreement. In the former, ORS 109.239 was held constitutional. In the latter, the trial Court errored when it instructed the jury concerning criminality of artificial insemination without physician supervision, which did influence bias of the predominately female jury resulting in unfair prejudice against Petitioner contrary to the principles established in McIntyre v. Crouch; Roe v. Wade; Griswold v. Conncticut; and Eisenstadt v. Baird, supra.

The Court instructed the jury not once, but twice upon the criminal aspects of artificial insemination, then instructed them that it was not an issue for them to decide, as follows:

"That it is a misdemeanor crime for a woman to artificially inseminate herself without physician supervision under ORS 677.990(1) and (3) and ORS 677.355 to 677.370."

"...even though that is not an issue for the jury to determine," i.e., that a crime occured or did not occur.

To avoid the error, the Court should have read the entire statutory scheme to the jury instead of infering that a crime occured. Petitioner timely objected via Counsel, who then took exception to this instruction.

Petitioner contends there is no record in McIntyre v. Crouch, supra, to suggest that criminal undertones were given to the unmarried woman artificially inseminating herself without supervision, for if it had, surely a mistrial would have occured. In that case, Petitioner wanted to be father, and the trial Court erroneously applied ORS 109.239 to preclude him, even though held constitutional, for legitimation purposes. In this case, the trial Court sought to legitimize the child by

discriminating against the donor, infering criminality upon the mother, with a statute that should be declared unconstitutional as it was applied because it plays upon the deeply rooted emotions of a predominately female jury in an unmarried womans choice to beget a child, deliberately prejudicing them against the donor, resulting in the denial of a fair and meaningful hearing. It is no more a crime for an unmarried woman to choose to have, or not have, a child under Roe v. Wade, supra, than it is for a man to donate semen under ORS 109.239.

For these reasons, and each of them, it is more than likely to suggest Petitioner would have prevailed on appeal and secured a new trial not only because the statute, ORS 677.990(1) and (3) is vague and overly broad, but because Petitioner was denied the objectiveness required in a jury of his peers under such controversial circumstances.

WOULD PETITIONER HAVE SECURED A MORE FAVORABLE RESULT ON RETRIAL

The second test in Accord Universal Ideas, supra, as applied in this instance, leaves no room for speculation, because: 1) without erroneous jury instruction, the uncorroborated word of Respondent would not be enough to find against Petitioner,. 2) without jury charge error, the paternity index and liklihood of paternity could be determined for its true probative value, 3) the DNA tests results are not conclusive as indicated by only the 99.59%, 4) since crminality of artificial insemination was not a triable issue of fact, the jury would be enjoined, 5) material witnesses could be available, shifting the preponderance, and 6) attorney-client privilege would not be violated under spurious attorney work product arguendo.

Petitioner, therefore, would prevail at retrial because the single issue left to be determined, whether sexual intercourse

or artificial insemination occured in April 1985, would be determined without prejudice, bias or undue influence and, Oregon's legitimation policy would be given the meaning its mentors intended.

WAS THE ATTORNEY-CLIENT PRIVILEGE VIOLATED CAUSING UNDUE INFLUENCE

Leslie Kline, (OSB # 76205) formerly Petitioner's attorney, was subpoenaed by Gary Hedlund (OSB # 73129) to testify at trial. On May 11, 1993 Leslie Kline appeared and testified that he had no knowledge of any surrogacy agreement between his client and Respondent for the 18 months of his employment by Petitioner.

It is patently obvious that Leslie Kline and Gary Hedlund collaborated upon Petitioner's letter demanding termination dated July 20, 1992, a confidence, because Gary Hedlund knew and had reason to know that his client's testimony could not be corroborated by any other legitimate means.

Under Oregon's Evidence Code, OEC 503 (3) an attorney is bound to claim this privilege on behalf of his client when called to testify. The only exceptions to this privilege are; 1) DR 4-101(2) and 2) DR 7-102(B) of the ABA Code of Professional Responsibility; Canon 37 of the ABA Canons of Professional Ethics; and do not qualify under the circumstances of this case, because the violation pertained to a confidence concerning an event that transpired in 1985 which was a matter of fact for the jury to determine without disclosure of the confidence violation. See: DR 4-101(A).

At all times pertinent herein, Petitioner exercised his attorney-client privilege in terms of being inviolate, despite repeated attempts to have Leslie Kline defend this case rather than ascribing to Gary Hedlund's Petition for Filiation and Paternity.

Leslie Kline . representation resulted in waiver of the right against compulsory

self-incrimination with the DNA testing he prescribed which could be used in a link in a chain of evidence to prosecute for criminal non-support and ultimately, with his spurious attorney work product arguendo and attempt to corroborate Respondent's testimony while refusing to claim the privilege.

Petitioner contends that letters from a client to his attorney, including knowledge of the substance of that correspondence, is privileged regardless of how that communication came into possession of party seeking to use. Bryant v. Dukehart, 106 Or 359, 210 P 454 (1922).

Such testimony can only be found to unduely influence a jury because, without it, Gary Hedlund would not have prevailed under the preponderance requirement. This practice should not be allowed to flourish in Oregon, or anywhere, for any reason, including Oregon's legitimation policy, if the ABA and OSB intends to enjoy any bona fide public trust.

The standing trial Court Order limiting evidence at trial should have been enforced and Leslie Kline's testimony enjoined as a gross violation of professional and ethical standards the public relies on.

The jury with the foregoing enumerated errors simply could not have delivered any other verdict except against Petitioner, who was denied a fair and meaningful trial; denied a remedy by being denied the right to appeal due to the Clerk's negligence and now it would appear that the Klamath County Circuit Court unlawfully enjoys its plenary form of judgment inconsistent with ORCP 70 B; contrary to the stare decisis of McIntyre v. Crouch, supra, and grossly in violation of the Constitutionally secured right to procreate, to due process and equal protection, as determined by this Court in Lehr v. Robertson, 463 US 248, 103 S Ct 2985, 77 L Ed 2d 614 (1983); 98 Or App at 471, fn 4 and 5, supra.

CONCLUSION

There is no reason of policy or logic to deny the Writ petitioned for, unless a compelling interest, legitimation, can be found to override litigants rights to due process and equal protection.

As applied by the trial Court, ORS 677.990(1) and (3) must be declared unconstitutionally vague and overly broad warranting reversal and remand.

Petitioner simply wants a fair and meaningful opportunity to ventilate the single issue in Respondent's suit.

WHEREFORE, Petitioner respectfully prays this Honorable Court exercise its discretion and grant the Writ.

DATED: This _____ day of April, 1994.

Respectfully submitted
under 28 USC § 1746(2),

Michael D. Crutchfield
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APPENDIX A

Gary L. Hedlund
Attorney at Law
303 Pine Street
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(503) 883-3456

June 15, 1983

Mr. Brent Caldwell

COPY

Attorney at Law
127 South Sixth Street
Klamath Falls, OR 97601
(503) 883-7117

RE: McGregor v. Crutchfield, 91-00170-CF

Dear Brent:

Enclosed please find a form of Judgment in the above entitled case as well as my calculations for your information.

This proposed form of Judgment has been served upon you as provided in ORCP 70. I plan to submit this form of Judgment to the Court for signature five business days after the date of this letter and I anticipate that it will be signed unless prior to that time you approve it as to

form or you file objections as to its form in writing with the Clerk of the Court. Thank you for your cooperation in this matter.

Sincerely,

/s/

GARY L. HEDLUND

GLH:dd

Encl.

cc: Carol McGregor

Clerk, Circuit Court

JUN 1993

RECEIVED

IN THE CIRCUIT COURT OF

THE STATE OF OREGON

FOR THE COUNTY OF KLAMATH

CAROL R. McGREGOR, Petitioner, vs. MICHAEL D. CRUTCHFIELD, Respondent.	Case No. 91-00170-CF DECREE OF FILIATION AND JUDGMENT

THIS MATTER came regularly for trial on the 10th day of May, 1993. The Petitioner appeared in person and through her attorney, Gary L. Hedlund. The Respondent appeared in person and through his attorey Brent Caldwell. The jury, after deliberation, returned a verdict in favor of the Petitioner and found by the preponderance of the evidence that the Respondent, Michael D. Crutchfield is the biological father of Kyle Matthew McGregor. The court thereafter on June 1, 1993 conducted a further hearing to determine all other issues pending between the parties.

Both parties appeared in person and through their attorneys at the June 1, 1993 hearing. The court has considered the verdict of the jury, the testimony of the parties, the exhibits presented and the statements and arguments of counsel and being fully advised, has previously issued it's partial letter opinion dated June 10, 1993, a copy of which is attached, marked Exhibit A and by this reference incorporated herein and the court being fully advised, now, therefore,

IT IS HEREBY ORDERED AND DECREED:

1. The Respondent, Michael D. Crutchfield is the natural father of Kyle Matthew McGregor, a boy, aged 7 years, born January 14, 1986.

2. The Petitioner, Carol R. McGregor is hereby awarded the future care, custody and control of the minor child of the parties, i.e., KYLE MATTHEW McGREGOR, a boy, aged 7 years, born January 14, 1986.

3. No visitation rights are included in this decree because the Respondent has requested none.

CURRENT AND FUTURE SUPPORT:

4. The Respondent, Michael D. Crutchfield shall pay to the Petitioner, Carol R. McGregor, the sum of $321.00 per month, as a contribution to the support of said minor child. The support amount is based upon the Oregon Child Support Guidelines using the Petitioner's current average monthly gross income of $1,937.00 per month and Respondent's average current monthly gross income of $1,961.00 per month. The first payment shall be due on June 1, 1993 and a like payment on the first day of each month thereafter during the minority of such minor child or so long as he is a child attending school within the meaning of ORS 109.124(1). Said child support payments shall be paid directly to the Department of Human Resources, Post Office Box 14506,

Oregon 97309 for appropriate distribution.

RETROACTIVE CHILD SUPPORT:

5. Respondent shall pay to the Petitioner and the Petitioner shall have judgment against the Respondent for past support and maintenance of the child in the amount of $11,396.00.

6. Respondent, shall maintain, during the minority of his child, any medical and dental insurance programs available through his place of employment for the benefit of the parties child. The parties shall pay jointly any uninsured medical or dental expenses incurred by the minor child of the parties in the following proportion: Petitioner, one-half; Respondent, one-half. Respondent shall provide to the Petitioner all information regarding the health plan so that the Petitioner may make claims on behalf of the child including the name and address of the plan administrator, a summary of the plan and such claim forms

as are necessary to submit claims.

7. The Respondent shall pay to the Petitioner and the Petitioner shall have judgment against the Respondent for Petitioner's reasonable attorney fees and costs incurred herein in the amount of $7,383.00.

8. Relevant data pertaining to this decree is: PETITIONER: CAROL R. McGREGOR. Address: 1105 N 8th Street, Klamath Falls, OR. 97601. Age: 39. DOB: 10/10/53. Social Security No. 543-70-2424. RESPONDENT: MICHAEL D. CRUTCHFIELD. Address: 630 Flowers Lane, Klamath Falls, OR. 97601. Age: 40. DOB: 5/13/53. Social Security No. 541-66-4201.

MONEY JUDGMENT-SUMMARY

1. Judgment Creditor: CAROL R. McGREGOR.

2. Attorney for Judgment Creditor: Gary L. Hedlund.

3. Judgment Debtor: MICHAEL D. CRUTCHFIELD.

4. Judgment Amount: Child Support $321.00 per month, beginning: June 1, 1993 and on the first day of each month thereafter. Ending date for child support payments: 18 years of age or so long as child for whom such payments are made is a "child attending school", within the meaning of ORS 107.108.

5. Judgment Amount: RETROACTIVE CHILD SUPPORT: $11,396.00.

6. Judgment Amount: ATTORNEYS FEES: $7,383.00.

7. Prejudgment Interest: NONE.

8. Postjudgment Interest: 9% per annum.

ATTORNEY CERTIFICATION

The attorney for the judgment creditor, Gary L. Hedlund, certifies that the information set forth in the summary described above accurately reflects the judgment.

Dated: June _____, 1993.

_____
Gary L. Hedlund

OSB # 73129

Attorney for

Petitioner

IT IS FURTHER ORDERED that Gary L. Hedlund is discharged as attorney of record.

ORDER

IT IS SO ORDERED this _____ day of June, 1993.

/s/
Circuit Court Judge

NOTICE OF INCOME WITHHOLDING:

The Support Order contained in this Decree is enforceable by income withholding under ORS 25.310. Withholding may occur whenever there are arrearages at least equal to the support payment for one month, or whenever the obligated parent requests such withholding. The District Attorney or, as appropriate, the Support Enforcement Division of the Department of Justice will assist you in securing such withholding.

DISTRICT COURT OF THE STATE OF OREGON

for KLAMATH COUNTY

316 MAIN STREET

KLAMATH FALLS, OR. 97601

(503) 883-5560

June 10, 1993

Gary Hedlund

Attorney at Law

303 Pine Street

Klamath Falls, OR. 97601

Brent Caldwell

Attorney at Law

127 S. 6th Street

Klamath Falls, OR. 97601

RE: McGregor v. Crutchfield

Case No. 91-170-CF

Gentlemen:

This matter came before the Court for hearing on June 1, 1993. At the conclusion of the hearing, I entered orders as follows based in part upon the stipulations of the

parties:

1. The Petitioner is entitled to attorney's fees and costs as set forth in her attorney's affidavit with the exception of $43.61.

2. The Respondent shall obtain and maintain medical insurance coverage for the child so long as such insurance is available through his place of employment.

3. The parties shall each be responsible for one-half of any uninsured medical cost for the child, including any deductible.

4. The Respondent shall be required to pay the sum of $321.00 per month for child support commencing with the first payment in June of 1993, and with a payment each month thereafter until the child reaches 18 years of age, is emancipated, or until age 21 if Kyle is a "child attending school" as set forth in ORS 109.124(1).

5. The Petitioner shall have care, custody and control of minor child and the

Respondent does not now seek visitation with the child.

The only issue for the Court to resolve is that of any retroactive child support. The Respondent argues that this case should be dismissed, asserting that it is barred by laches. I conclude that laches do not apply. The Respondent shall pay and the Petitioner shall have judgment for the sum of $50.00 per month with the first payment due in January of 1986, and $50.00 per month thereafter to and including February of 1991. Commencing March 1, 1991, and each month thereafter, the Respondent shall pay and the Petitioner shall have judgment for the sum of $321.00 per month until support terminates as set forth above.

Mr. Hedlund should submit the appropriate order bearing either Mr. Caldwell's approval as to form or a proof of service indicating that it has been served upon Mr. Caldwell five days prior to its presentation to the Court.

Very truly yours,

/s/

CAMERON F. WOGAN

Circuit Judge pro tem

CFW:jmt

Jan 86 → 5 years + 1 mo.

Feb. 91 61 x 50

$3050

3/1/91 →

5-1-93 →

24 { 3-1-91 / 2-28-93

2 { 3-1-93 / 5-1-93

26 x 321 =

8346

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7383

18779

APPENDIX B

IN THE COURT OF APPEALS

OF THE STATE OF OREGON

CAROL R. McGREGOR,	) Klamath County
	)
Petitioner-Respondent,	) Circuit Court No.
	)
v.	) 91-00170-CF
	)
MICHAEL D. CRUTCHFIELD,	) CA A80757
	)
Respondent-Appellant.	)
	)
	)

ORDER DENYING MOTION FOR STAY AND FOR CERTIFICATION OF THE AUDIO RECORD: ORDER OF DISMISSAL

Appellant has appealed from a Circuit Court judgment entered on June 25, 1993. The notice of appeal was filed on August 4, 1993, more than 30 days after the judgment was entered. A notice of appeal is required to be filed within 30 days after the judgment being appealed is entered. ORS 19.026(1). Therefore, this appeal is dismissed as untimely filed.

August 23, 1993.

/s/ W. Richardson

CHIEF JUDGE

Appellate Judgment

Effective Date: January 27, 1994

cc: Michael D. Crutchfield

Carol R. McGregor

IN THE COURT OF APPEALS

OF THE STATE OF OREGON

CAROL R. McGREGOR,	Klamath County
Petitioner-Respondent,	Circuit Court No.
v.	91-00170-CF
MICHAEL D. CRUTCHFIELD,	CA A80757
Respondent-Appellant.	

ORDER DENYING RECONSIDERATION

The Court of Appeals has considered the Petition for Review filed in this case as a Petition for Reconsideration and has denied the petition. ORAP 9.15. The Supreme Court may now proceed to determine whether to grant review. The appellate court decision is not enforceable until the Supreme Court has completed its review of the Petition. ORAP 14.05.

/s/

William L. Richardson

CHIEF JUDGE

November 3, 1993

Date

c: Carol R. McGregor Pro se Respondent

Michael D. Crutchfield Pro se

Appellant

A80757.rcd

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APPENDIX C

IN THE SUPREME COURT

OF THE STATE OF OREGON

CAROL R. McGREGOR,	)	ORDER DENYING
	)	
Respondent/Respondent,	)	REVIEW
	)	
and	)	CA A80757
	)	
MICHAEL D. CRUTCHFIELD,	)	SC S40631
	)	
Appellant/Petitioner	)	
	)	
	)	

The Court has considered the petition for review and orders that it be denied.

DATE: December 21, 1993.

/s/

WALLACE P. CARSON, JR.

CHIEF JUSTICE

COPIES TO:

CAROL R. McGREGOR Atty. for Respondent

MICHAEL D. CRUTCHFIELD Atty for Appellant

This computer generated case caption may not comply with ORAP 2.05(1) & 5.05(5b).

APPENDIX D

THE OREGON RULES OF CIVIL PROCEDURE

in pertinent part:

ORCP Rule 70. FORM AND ENTRY OF JUDGMENT

A. Form. Every Judgment shall be in writing plainly titled as a judgment and set forth in a separate document.

B. Entry of Judgments.

B(1) Filing; Entry; Notice. All judgments shall be filed and notation of the filing shall be entered in the register by the clerk. The clerk, on the date judgment is entered, shall mail a notice of the date of entry of the judgment in the register and shall mail a copy of the entry in the judgment docket. If the judgment was not docketed in the judgment docket, the clerk shall give notice of this fact. The clerk shall mail the notice to the attorneys of record, if any, of each party who is not in default for failure to appear.

If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk shall make a note in the register of the mailing.

PLEASE NOTE: Petitioner's attorney, Brent Caldwell, at the conclusion of the trial et. seq. hearing, Petition pg. 5, was no longer representing Petitioner. Respondent's attorney, Gary Hedlund, was discharged as attorney of record at the conclusion of the proposed form of judgment, App A-8, supra, concerning the above ORCP Rule 70B(1) mailing of notice of entry of judgment requirement. Petitioner's affidavit of record in the trial and both appellate courts of Oregon shows that he hasn't received the required notice from his attorney or, from the clerk of the trial court.